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# **EXHIBIT 10**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**CHARLES SEWARD, Individually, and on Behalf of All Others Similarly**  
Situating, Plaintiff, v. **INTERNATIONAL BUSINESS MACHINES D/B/A IBM**  
**CORP. Defendant.** ))))))) Case No. 08 CIV  
3976 ECF CASE DECLARATION OF CATHY S. BARDAY

I, CATHY S. BARDAY, hereby declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the following is true and correct and based upon my own personal knowledge and, if called to testify, would state:

**EMPLOYMENT BACKGROUND**

1. I worked as an hourly call center employee for IBM in its Atlanta, Georgia offices from January 1997 to December 2007.
2. I have specific information about the terms and conditions of employment for IBM call center employees; training of IBM call center employees; the work and duties of call center employees; IBM's time keeping system; IBM production matrices; and, IBM compensation and directives from IBM to control overtime hours.
3. While employed by IBM, I worked under the following manager: Kerry Bethea.
4. While employed by IBM, I worked under the following 2<sup>nd</sup> line managers: Sharon Lofton.

**IBM'S INACCURATE TIME KEEPING**

5. IBM uses a timekeeping system known as "TOTALS." "TOTALS" is a mainframe time keeping system that is also accessible via IBM's website.
6. Typically, TOTALS defaults to reflect the "scheduled" time as the time actually worked unless an exception is entered. No overtime could be logged without prior approval by management. Exceptions could only be entered by managers. Management informed us that IBM did not pay overtime. They informed us that the budget did not allow overtime since IBM was "sponsored."
7. I was dissuaded by management from requesting that a manager enter "exceptions" showing overtime hours worked on the TOTALS system. TOTALS did not accurately capture all the actual time I or other call center employees worked each week.
8. IBM requires its employees to log on to their telephone system at their scheduled start time by punching in their employee password. IBM directed us to be ready to start taking phone calls precisely at the time our scheduled shift started. To do

so, I and other call center employees routinely arrived at our desks to work at least 15-30 minutes and sometimes up to an hour before our scheduled start times. This pre-shift work was not recorded by IBM. IBM also requires its employees to log off their telephone system at the end of their scheduled shift, unless the employee was on a call and then they stayed on the call until conclusion. They were not paid overtime for this. IBM produces a report each day of telephone log on and off times.

9. IBM required its call center employees to swipe a key card when they entered through the main doors, and again when entering their work floor of the call center. These entries were known as badge swipe times and were reflected on an IBM report. IBM did not require its employees to swipe out when they left their floor at the end of their work time.

#### **IBM "EXCEPTION" PAY**

10. I was paid an hourly rate as a call center employee.
11. IBM pays its call employees regular pay on a bi-monthly basis.
12. IBM pays overtime compensation on a weekly basis because it is an "exception" to regular pay.
13. IBM creates an exception report reflecting time and compensation that are exceptions to the rule which is scheduled time.

#### **UNPAID TIME WORKED OFF THE CLOCK**

14. As a call center employee, I was typically scheduled to work 40 hours per week.
15. On average I worked approximately 8.5 to 9 hours per day and a total of approximately 42.5 to 45 hours per week. I was typically only paid for 8 hours per day and 40 hours per week. I worked unpaid time off the clock an average of 30 minutes to 1 hour per day and 2.5 to 5 hours per week or more.
16. I and other call center employees routinely arrived at our desks to work at least 15-30 minutes or more, before our scheduled start times so that we could boot up our computers and start any computer applications that we would need for the job. This pre-shift work was not recorded by IBM even though IBM's management was aware of it. I was not paid for this work.
17. I and other call center employees were required to stay available to handle calls until the end of our scheduled shift. IBM directed us to finish a call even if it continued past our scheduled shift or make sure the call was transferred to another call center employee. Often times I worked past my scheduled shift completing these calls. I was not paid for the time I worked past my scheduled shift.

18. IBM caused me and other call center employees to work "off the clock", which no doubt resulted in a savings in labor costs and payroll for the company. IBM informed us that it helped "service levels."
19. IBM required me and other call center employees to work "off the clock," on average, approximately 2.5 to 5 hours per week or more.

#### **COMPLAINTS ABOUT TIMKEEPING AND OVERTIME**

20. As a matter of regular practice, I was told that overtime was not permitted to be paid. You were required to work it but received no compensation for it. Moreover, if call center employees completed an exception report, they were considered a "trouble-maker" and continued employment would be doubtful.

#### **IBM's PRODUCTION MATRIX**

21. IBM call centers use a production matrix to maximize phone call efficiency. IBM tracks number of calls and length of each call to run its matrix calculations.
22. IBM prepares statistical phone reports which provide averages on length of calls and amount of calls. This report deals with call patterns.
23. To further increase efficiency, IBM even pre-determines when its call center employees are permitted bathroom breaks. There were times when employees were told to wait and go to the bathroom later. Lunches and breaks were denied and at times employees were given a small sandwich to eat at their desk.
24. IBM bases its matrices on an eight hour shift. IBM does not take preparation time or post shift time into account when preparing its matrices.
25. Most IBM contracts are paid on a per call basis. Therefore, if IBM is able to shorten its calls, each call center employee can handle more calls during an eight hour shift and IBM will generate more revenue.
26. IBM provides incentives in the form of gift certificates, balloons and accolades to call center employees with high production (i.e. the most phone calls per shift). IBM generates reports which rank call center employees based on their production rate. This report is called an Employee Performance Report and ranks call center employees on calls taken on a daily, weekly, monthly and yearly basis. This affects the variable pay scale and Performance Bonus Rating (PBC) for the employee.

#### **OTHER**

27. IBM call center employees at band level 5 and below were paid an hourly rate. Employees rated at band level 6 or higher are paid a salary.

28. IBM prohibits its call center employees from using personal cell phones on the call center floors.
29. I am aware of other IBM call centers that are similar to the Atlanta, Georgia call center. Specifically, there is another large call center located in Dallas, Texas.
30. All of the other call center employees were subject to the same policies described above and were therefore required to work off-the-clock. I know this because: 1) I personally observed them working before clocking-in in the morning and after clocking-out in the evening; 2) IBM informed me and the other call center employees, both verbally at meetings and via mass emails directed to all call center employees nationwide, that we were required to work "off the clock" without overtime compensation as described above; and, 3) I talked to other call center employees who informed me that they also were performing off-the-clock work both before and after their shifts and did not receive overtime compensation for these hours consistent with IBM's policies as described above.

Dated: July 29, 2008

Cathy S. Barday Sign Name

Cathy Barday Print Name  
CATHY BARDAY  
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